

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of AT&T, Inc. and DIRECTV for)	MB Docket No. 14-90
Consent to Assign Licenses or Transfer Control)	
of Licenses and Authorizations)	
)	
Applications of Comcast Corporation, Time)	MB Docket No. 14-57
Warner Cable Inc., Charter Communications,)	
Inc., and Spinco to Assign and Transfer Control)	
of FCC Licenses and Other Authorizations)	

COMMENTS OF HERRING NETWORKS, INC.

Herring Networks, Inc. ("Herring Networks") submits these comments in response to the Commission's public notice regarding the applications of AT&T Inc. ("AT&T") and DIRECTV to transfer control of FCC licenses and other authorizations.¹ Herring Networks owns and operates two national cable services: AWE (formerly WealthTV), a 24/7 lifestyle and entertainment network, and One America News Network, a credible source for national and international news. AWE recently celebrated its ten-year anniversary, while One America News Network launched in 2013 to fill a void in existing cable news networks.

Herring Networks encourages the FCC to swiftly approve the transfer of DIRECTV's licenses to AT&T. As an independent and family-owned national cable programmer, Herring Networks is well-positioned to assess the benefits and challenges presented by the combination of two multichannel video programming distributors ("MVPDs"). Herring Networks has seen first-hand how AT&T's U-Verse service has acted as a disruptive force in the MVPD

¹ *Commission Seeks Comment on Applications of AT&T Inc. and DIRECTV to Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, MB Docket No. 14-90, DA 14-1129 (rel. Aug. 7, 2014).

marketplace and believes that expanding AT&T's reach as a distributor of video programming will enhance competition and benefit consumers and independent programmers, such as Herring Networks. Because AT&T is focused on the distribution, not the production, of content, AT&T can make independent, consumer-driven decisions about what programming to carry rather than worrying about protecting the interests of commonly-owned programmers. This has allowed AT&T to serve as an important counterweight to vertically-integrated cable networks such as Comcast and Time Warner Cable. As the Commission simultaneously considers the proposed merger between those two entities, the value of strengthening a competitive provider like AT&T is readily apparent, particularly in contrast to the harms that would come from combining the industry's largest vertically-integrated providers. Because the proposed transactions are not equal, the FCC should rapidly approve AT&T's acquisition of DIRECTV while providing careful scrutiny to Comcast's acquisition of Time Warner Cable.

I. AT&T HAS A PROVEN RECORD OF PROVIDING FAIR TREATMENT TO INDEPENDENT PROGRAMMERS SUCH AS HERRING NETWORKS.

Independent programmers, like Herring Networks, face tremendous obstacles to obtaining carriage, which is critical to their survival. Although networks like AWE and One America News Network provide unique programming that has proven extremely popular with cable subscribers, it can be difficult, if not impossible, for these networks to overcome entrenched interests that have ulterior motives to maintain the status quo and not promote the development of new networks. Many MVPDs simply will not consider the value proposition that carriage of independent networks presents.

AT&T, for its part, has always provided open and fair consideration of the benefits of offering independent programming networks, such as AWE and One America News Network, to subscribers of its U-verse TV service. Ever since the inception of the U-verse TV service in

2006, AT&T has demonstrated an appreciation for the value of program diversity. Rather than just copying the channel lineups of its more established competitors, AT&T has embraced opportunities to include new, diverse programming voices.

Herring Networks views AT&T as a partner in its efforts to provide unique programming that is not available on any other channel. U-verse added AWE to its channel lineup shortly after the service launched, and U-verse subscribers have enjoyed AWE programming ever since. When Herring Networks saw an opportunity to launch a news network that departed from the opinion-driven offerings of other cable news channels, it found a welcome reception from AT&T. AT&T has always negotiated with Herring Networks fairly and in good faith, and as a result, U-verse customers have access to some of the most diverse program offerings of any MVPD in the country.

II. A STRENGTHENED AT&T WILL SERVE AS AN IMPORTANT COUNTER-WEIGHT TO VERTICALLY-INTEGRATED CABLE PROVIDERS.

Vertical integration among some of the nation's largest cable providers serves as one of the greatest threats to the diversity of programming available to consumers. As the FCC has recognized, when the same entity controls the upstream supply of content and the downstream distribution of that content, it has an ability and incentive to use its dominant distribution position "to harm other competing video programming firms and harm competition in video programming."² The Commission has recognized that this is particularly true for Comcast, whose market share in some of the nation's highest-ranked DMAs is considerably greater than its national market share would indicate.³ If the Commission permits Comcast to acquire Time Warner Cable's systems in New York and Los Angeles, Comcast's will further solidify its

² See *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, 26 FCC Red. 4238 ¶ 116 (2011).

³ *Id.*

dominance in the largest and most-influential DMAs, making it that much more difficult for an independent programmer like Herring Networks to survive without carriage on those systems. Accordingly, Herring Networks agrees with the concerns expressed by a number of independent programmers about the devastating effect that the Comcast-Time Warner Cable transaction could have on the ability of independent programmers to survive without distribution on Comcast – threatening program diversity nationwide.⁴

It is not enough for the FCC to prevent *additional* distortion in the video programming marketplace; it must also address the present imbalance. Chairman Wheeler recently extolled the virtues of competition in the Communications industry, declaring that “where greater competition can exist, we will encourage it.”⁵ Allowing AT&T to extend its positive influence over the market for video programming will increase competition and serve as a critical counterweight to the current dominance of vertically-integrated players such as Comcast and Time Warner Cable.

Although U-Verse and other telephone MVPDs provide an important distribution platform for independent programmers such as Herring Networks, their scope, and therefore ability to drive the market, pales in comparison to the largest MVPDs. An AT&T-owned DIRECTV would change that calculus, providing a competitive-minded provider like AT&T

⁴ See Comments of Back9Network, MB Docket No. 14-57 (Aug. 25, 2014) (“A combined Comcast-TWC would leave start-up networks with only one option for cable carriage in the markets most desirable for advertisers. And the combined company would have a vast horizontal footprint, giving it extraordinary power to block competing channels and to promote its own networks.”); Comments of Entravision Communications Corp., MB Docket No. 14-57 (Aug. 25, 2014) (since the 1992 Cable Act, “the benefits of quality independent programming have only increased in the wake of growing industry consolidation”); Comments of Tennis Channel, Inc., MB Docket No. 14-57 (Aug. 25, 2014) (“This combination creates an even greater capacity for Comcast to disadvantage rival programmers—a threat that is further magnified by Comcast’s emergence as a dominant retailer and wholesaler of TV Everywhere and VOD services”); Comments of TheBlaze, Inc., MB Docket No. 14-57 (Aug. 25, 2014) (“If Comcast gets bigger, the incentive and ability to protect and foster its owned networks will be even greater.”); Comments of WeatherNation TV, Inc., MB Docket No. 14-57 (Aug. 25, 2014) (recognizing that “[n]o one linear national programming network can survive without access to 30 million households”).

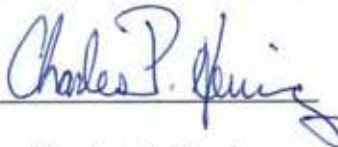
⁵ See Prepared Remarks of FCC Chairman Tom Wheeler, 2014 CTIA Show (Sept. 9, 2014), *available at* <http://www.fcc.gov/document/chairman-wheeler-remarks-2014-ctia-show-super-mobility-week>.

with the scale (both in terms of subscribers and geographic reach) to compete with the largest vertically-integrated players. This would allow AT&T to serve as a truly disruptive force, causing vertically-integrated operators to rethink their discriminatory practices and, instead, to consider carriage of independent programmers on the merits. The result will be a more competitive and more diverse video programming market place that can better serve the needs of the nation's consumers.

III. CONCLUSION

Given the substantial pro-competitive benefits of allowing AT&T to acquire DIRECTV, the FCC should quickly approve this transaction. These pro-competitive benefits apply no matter how the Commission addresses the Comcast-Time Warner Cable proposal, and the agency should resist the temptation to group these transactions together. Rather, the FCC should prioritize approval of the AT&T-DIRECTV transaction and then turn its attention to the much more complicated and troublesome merger between Comcast and Time Warner Cable.

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